



AN ACT REVISING LAWS RELATING TO INSURANCE PRODUCERS; REVISING INSURANCE PRODUCER LICENSING; PROVIDING DEFINITIONS; AMENDING SECTIONS 33-2-301, 33-2-305, 33-2-306, 33-17-102, 33-17-212, 33-17-214, 33-17-1001, AND 33-17-1203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-2-301, MCA, is amended to read:

"33-2-301. Short title -- purpose -- definitions. (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) ~~This~~ The purpose of this part must be applied is to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

(a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(b) (i) "Business entity" means a corporation, a limited liability company, an association, a partnership, a limited liability partnership, or other legal entity.

(ii) The term does not include an individual.

~~(b)(c)~~ "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines insurance producer may place surplus lines insurance under 33-2-307.

~~(e)~~(d) "Export" means to place surplus lines insurance with an unauthorized insurer.

~~(d)~~(e) "Producing insurance producer" means the individual insurance producer dealing directly with the person seeking insurance.

~~(e)~~(f) (i) "Surplus lines insurance" means any insurance on risks resident, located, or to be performed in this state permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance.

(ii) The term does not include the kinds of insurance exempted under 33-2-317.

~~(f)~~(g) "Surplus lines insurance producer" means an individual, ~~partnership, or corporation~~ or business entity licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

~~(g)~~(h) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states."

Section 2. Section 33-2-305, MCA, is amended to read:

"33-2-305. Licensing of surplus lines insurance producer -- fee. (1) ~~A If a person may not place~~ places a contract of surplus lines insurance with an unauthorized insurer, ~~unless the person is the person placing~~ the contract must be licensed as a property and casualty insurance producer and ~~possesses~~ possess a current surplus lines insurance producer's license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance producer's license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the fee prescribed by 33-2-708; and

(b) submitted to the commissioner a completed license application in a form approved by the commissioner; ~~and~~

~~— (c) been licensed as a property and casualty insurance producer continuously for 5 years or more.~~

(3) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

(4) A ~~corporation~~ business entity is eligible to be licensed as a surplus lines insurance producer if:

(a) the ~~corporate~~ business entity license lists the individuals within the ~~corporation~~ business entity who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the ~~corporate~~ business entity license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 3. Section 33-2-306, MCA, is amended to read:

"33-2-306. Surplus lines insurance producer's authority under license -- acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer's license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, ~~partnership,~~ or ~~corporation~~ business entity that has not been appointed as an insurance producer in this state and may ~~compensate him therefor~~ provide compensation for the service, notwithstanding 33-17-1103.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered."

Section 4. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. As used in this title, the following definitions apply:

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer;

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies

issued by the insurer; or

(v) claims examiner as defined in 39-71-116.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from the company's credit card holders who have authorized the company to do so, if the company does not adjust or

settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(6) "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.

(7) "Consultant license" means a document issued by the commissioner that authorizes an individual to act as an insurance consultant.

(8) "Home state" means the District of Columbia or any state or territory of the United States in which the insurance producer:

(a) maintains a principal place of residence or a principal place of business; and

(b) is licensed as an insurance producer.

~~(8)~~(9) "Individual" means a natural person.

~~(9)~~(10) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

~~(10)~~(11) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

~~(11)~~(12) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

~~(12)~~(13) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of

insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

~~(13)~~(14) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

~~(14)~~(15) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

~~(15)~~(16) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

~~(16)~~(17) "Lines of authority" means any kind of insurance as defined in Title 33.

~~(17)~~(18) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

~~(18)~~(19) "Person" means an individual or a business entity.

~~(19)~~(20) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

~~(20)~~(21) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

~~(21)~~(22) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

~~(22)~~(23) "Suspend" means to bar the use of a person's license for a period of time.

~~(23)~~(24) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

~~(24)~~(25) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

Section 5. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required -- exceptions -- fees. (1) Except as provided in subsection (6), an

individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) ~~If Except as provided in subsection (6), if the applicant is a partnership or corporation business entity,~~ each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license ~~shall~~ must meet the qualifications as provided in this section.

(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. ~~For which, for the purposes of this provision, property insurance includes marine insurance;~~

(d) casualty insurance;

(e) surety insurance;

(f) limited lines credit insurance;

(g) title insurance.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license;

(c) an applicant for a license as a nonresident insurance producer;

(d) transportation ticket agents of common carriers applying for a license to solicit and sell only:
 (i) accident insurance ticket policies; or
 (ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents; or

(e) an association applying for a license under 33-17-211; ~~or~~

~~— (f) an individual who, within 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.~~

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 6. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license -- insurance producer lines of authority -- license data -- lapse of license -- change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include:

(i) funeral insurance as defined in 33-20-1501;

- (ii) benefits in the event of death or dismemberment by accident; and
- (iii) benefits for disability income;
- (b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;
- (c) property insurance coverage for the direct or consequential loss or damage to property of every kind;
- (d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;
- (e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;
- (f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
- (g) limited line credit insurance; or
- (h) any other line of insurance permitted under Title 33.
- (3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.
- (4) The license of a ~~partnership, corporation, or association~~ business entity must also state the name of each individual authorized to exercise the license powers.
- (5) Each license remains in effect, unless it is suspended, revoked, or terminated or the license lapses.
- (6) (a) A person shall inform the commissioner in writing within 30 days of:
 - (i) a change of address;
 - (ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:
 - (A) any administrative action related to transacting insurance;
 - (B) any action taken against any type of securities license; and
 - (C) any criminal action, excluding traffic violations.
- (b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.
- (ii) The term does not include an action that is dismissed or that results in an acquittal, for which no report

is necessary."

Section 7. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, adjuster license, or consultant license, may levy a civil penalty in accordance with 33-1-317, or may choose any combination of actions when an insurance producer, adjuster, consultant, or applicant for those licenses has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud, including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the continuing education affidavit;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(h) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(i) had a similar license denied, suspended, or revoked in any other state;

(j) forged another's name to an application for insurance or to any document related to an insurance transaction;

(k) cheated on an examination for a license; ~~or~~

(l) knowingly accepted insurance business from a person who is not licensed;

(m) failed to comply with a final administrative or court order imposing a child support obligation; or

(n) failed to pay state income tax determined to be delinquent or to comply with any final administrative or court order directing payment of state income tax.

(2) The license of a ~~partnership or corporation~~ business entity may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered or has lapsed."

Section 8. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education -- basic requirements -- exceptions. (1) Unless exempt under subsection (3):

(a) an individual licensed to act as an insurance producer, adjuster, or consultant other than an individual licensed for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education, including at least 3 hours of ethics credits and at least 1 credit hour on changes in Montana insurance statutes and administrative rules;

(b) an individual licensed to act as an insurance producer only for limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved continuing education, including at least 1 credit hour on changes in Montana insurance statutes and administrative rules and the remaining credit hours in the areas of insurance law, ethics, or limited lines credit insurance;

~~—— (c) an individual licensed as an insurance producer, adjuster, or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.~~

(2) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(3) The minimum continuing education requirements do not apply to:

(a) an individual holding a temporary license issued under 33-17-216; or

(b) an insurance producer, adjuster, or consultant otherwise exempted by the commissioner."

Section 9. Effective date. [This act] is effective July 1, 2009.

Section 10. Applicability. [Section 8] applies to 24-month periods for obtaining continuing education beginning on or after January 1, 2010.

- END -

I hereby certify that the within bill,
SB 0127, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 127
INTRODUCED BY K. GILLAN
BY REQUEST OF THE STATE AUDITOR

AN ACT REVISING LAWS RELATING TO INSURANCE PRODUCERS; REVISING INSURANCE PRODUCER LICENSING; PROVIDING DEFINITIONS; AMENDING SECTIONS 33-2-301, 33-2-305, 33-2-306, 33-17-102, 33-17-212, 33-17-214, 33-17-1001, AND 33-17-1203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.